

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

ENBRIDGE PIPELINES (ILLINOIS) ) DOCKET NO.  
L.L.C. ) 07-0446  
)  
Application pursuant to Sections )  
8-503, 8-509 and 15-401 of the )  
Public Utilities Act - the Common )  
Carrier by Pipeline Law to )  
Construct and Operate a Petroleum )  
Pipeline and when necessary, to )  
take private property as provided )  
by the Law of Eminent domain. )

Springfield, Illinois  
Wednesday, October 3, 2007

Met, pursuant to notice, at 11:00 a.m.

BEFORE:

MR. LARRY JONES, Administrative Law Judge

APPEARANCES :

MR. GERALD A. AMBROSE  
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SIDLEY AUSTIN, LLP  
One South Dearborn  
Chicago, Illinois 60603  
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(Appearing on behalf of  
Applicant )

SULLIVAN REPORTING COMPANY, by  
Carla J. Boehl, Reporter  
Ln. #084-002710

1 APPEARANCES: (Cont'd)

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3 Senior Counsel  
4 1100 Louisiana, Suite 3300  
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5 (Appearing on behalf of  
6 Applicant)

7 MR. JAMES V. OLIVERO  
8 Office of General Counsel  
527 East Capitol Avenue  
Springfield, Illinois 62701  
Ph. (217) 785-3808

9 (Appearing on behalf of Staff of  
10 the Illinois Commerce  
Commission)

11 MR. DANIEL J. GREER  
12 Manager  
427 South Fifth Street  
13 Springfield, Illinois 62701  
Ph. (217) 744-1000

14 (Appearing on behalf of Kraft  
15 Farms, LLC)

16 MR. ROY P. FARWELL  
17 Staff Counsel  
100 North Broadway, Suite 1500  
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19 (Appearing on behalf of Union  
20 Pacific Railroad Company via  
teleconference)

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1 APPEARANCES: (Continued)

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4 17641 South Ashland Avenue  
5 Homewood, Illinois 60430

6 (Appearing on behalf of  
7 Illinois Central Railroad  
8 Company via teleconference)

9 MR. ANDREW HOLSTINE  
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11 707 Skokie Boulevard, Suite 500  
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14 (Appearing on behalf of  
15 Intervenors via teleconference)

16 MR. THOMAS J. PLIURA  
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21 (Appearing on behalf of  
22 Intervenors via teleconference)

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(Appearing on behalf of  
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1		<u>I N D E X</u>			
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	None .				
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13		<u>EXHIBITS</u>			
14					
15				<u>MARKED</u>	<u>ADMITTED</u>
16	None .				
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PROCEEDINGS

JUDGE JONES: On the record. Good morning. I call for hearing Docket Number 07-0446. This is titled in part Enbridge Pipeline Illinois, LLC, application pursuant to Section 8-503, 8-509 and 15-401 of the Public Utilities Act and Common Carrier by Pipeline Law to construct and operate a petroleum pipeline and when necessary to take private property as provided by the law of Eminent Domain.

At this time we will ask the various parties or potential parties to enter your respective appearances orally for the record. In doing so please state your name, business address and business telephone number. We will start with attorneys entering appearances on behalf of the Applicant Enbridge Pipeline.

MR. AMBROSE: Good morning, Your Honor. On behalf of the Applicant, Gerald A. Ambrose and G. Darryl Read of Sidley Austin, LLP, One South Dearborn in Chicago, Illinois 60603. Our general number is (312) 853-7000.

Also with us today is Joel W. Kanvik

1 of Enbridge Energy Company, Inc. He is senior  
2 counsel with the company. Business address is 1100  
3 Louisiana, Houston, Texas 77002. General phone  
4 number is (713) 821-2000.

5 JUDGE JONES: Thank you. Let's continue with  
6 appearances from those who are physically present in  
7 the Springfield hearing room and then we will take  
8 appearances from those who are on the phone.

9 Are there other appearances to be  
10 entered by those who are in Springfield?

11 MR. OLIVERO: Your Honor, appearing on behalf  
12 of Staff witnesses of the Illinois Commerce  
13 Commission is Jim Olivero. My business address is  
14 527 East Capitol Avenue, Springfield, Illinois 62701,  
15 and my phone number is 217 area code 785-3808.

16 JUDGE JONES: Thank you. Are there any other  
17 appearances to be entered by those who are physically  
18 present in Springfield at this time?

19 MR. GREER: My name is Daniel --

20 JUDGE JONES: Just one moment. You will have  
21 to come up to the microphone so that they will be  
22 able to hear you on the phone. Thank you.

1           MR. GREER:   My name is Daniel J. Greer.   I am  
2   manager of Kraft Farms, LLC, 426 South Fifth Street,  
3   Springfield, Illinois 62701, area code  
4   (217) 744-1000.

5           JUDGE JONES:   And could you spell your last  
6   name for us, please?

7           MR. GREER:   G-R-E-E-R.

8           JUDGE JONES:   Thank you.   And have you filed  
9   any intervening petitions at this time, do you  
10   recall?

11          MR. GREER:   No, we have not.

12          JUDGE JONES:   Thank you.   Are there any other  
13   appearances to be entered on the record today by  
14   those who are physically present in the Springfield  
15   hearing room?   Let the record show there are not, at  
16   least at this time.

17                        At this time then we will take  
18   appearances for those who are participating by  
19   telephone from a variety of locations.   So you may  
20   proceed with those appearances.

21          MR. PLIURA:   This is Tom Pliura, P-L-I-U-R-A,  
22   attorney for one of the Intervenorors, and several

1     Intervenors actually that I will be entering our  
2     appearance for. My address is P.O. Box 130, LeRoy,  
3     L-E, capital R-O-Y, LeRoy, Illinois 61752, and our  
4     office phone is 309 area code, 962-2299.

5             JUDGE JONES: Thank you. And you are entering  
6     appearances on behalf of those filers of intervening  
7     petitions who have petitions on file at this time, is  
8     that correct?

9             MR. PLIURA: Yes, I have entered petitions for  
10    intervenors and entered our appearance for Carlisle  
11    and DeAnna Kelly already and I anticipate having  
12    quite a few more over the next day or so. I have got  
13    the paperwork done. I just haven't filed them yet,  
14    Judge Jones.

15            JUDGE JONES: Thank you. We will take other  
16    appearances for the record at this time from others  
17    who are on the phone. You may go ahead.

18            MR. HOLSTINE: Judge, this is Andy Holstine,  
19    and I am entering an appearance. We have filed an  
20    intervening petition on behalf of the Temple Trust  
21    and the Armstrong Trust, and my business address is  
22    707 Skokie Boulevard, Suite 500, Northbrook, Illinois



1       60062.   And our general phone line is (847) 272-7360.

2               JUDGE JONES:   Thank you.   I think we have some  
3   other persons on the phone who intend to enter  
4   appearances, so you may proceed.

5               MR. FARWELL:   Yes, this is Roy Farwell,  
6   F-A-R-W-E-L-L, appearing on behalf of the Union  
7   Pacific Railroad Company which has filed a petition  
8   to intervene.   I am addressed at 100 North Broadway,  
9   Suite 1500, St. Louis, Missouri 63130.   Phone number  
10   area code (314) 331-0566.   I am appearing not as an  
11   attorney but as an employee representative with  
12   sufficient legal skill as recognized by the  
13   Commission previously under Tools and ask to be able  
14   to participate in that manner.

15              JUDGE JONES:   And what is your position or  
16   capacity?

17              MR. FARWELL:   I am regional counsel here for  
18   the Union Pacific.   I am just not a member of the  
19   Illinois bar.   I do appear regularly before the  
20   Commission on the railroad side.

21              JUDGE JONES:   And are you an employee of that  
22   company?

1           MR. FARWELL:   Yes, I am.

2           JUDGE JONES:   Thank you.   Other appearances by  
3   whom?

4           MR. HEALEY:   This is Tom Healey, H-E-A-L-E-Y.  
5   I am appearing on behalf of Illinois Central Railroad  
6   Company.   Illinois Central has not yet filed a  
7   petition to intervene but I did throw an appearance  
8   on while I was out of town just to make sure I got on  
9   the service list.   We will be filing a petition to  
10   intervene.   Again, I am in-house counsel.   My address  
11   is 17641 South Ashland Avenue and that's in Homewood,  
12   Illinois 60430.

13          MR. ROBINSON:   Jon Robinson, that's J-O-N,  
14   Robinson.   My office is 202 South Franklin Street,  
15   Second Floor, Decatur, Illinois 62523, and I am  
16   appearing on behalf of Michelle and Ray Preiksaitis,  
17   that's P-R-E-I-K-S-A-I-T-I-S.   My phone number is  
18   (217) 429-4296, and we have already filed a petition  
19   to intervene.

20          JUDGE JONES:   Thank you.   Are there other  
21   appearances by phone?   All right.   Let the record  
22   show there are not, at least at this time.

1                   At the prehearing conference this  
2    morning one thing we will be dealing with is  
3    scheduling. We would like to also look at the  
4    Petitions for Leave to Intervene and may rule on some  
5    of those as well, particularly if there are no  
6    objections to them.

7                   From a scheduling standpoint I think  
8    we will proceed with that next. I will look to the  
9    Commission Staff at this time. Does Staff have any  
10   scheduling proposals to offer?

11                 MR. OLIVERO: Your Honor, we had sent a  
12    responsive e-mail to all the parties earlier in the  
13    week indicating that, given the nature of the fact  
14    that I believe the company is going to be filing its  
15    direct testimony the end of this week, we were  
16    thinking of doing a status hearing sometime the week  
17    of October 29 in order to accommodate one of the  
18    Staff witnesses who is currently out of the office.

19                   In speaking with the company this  
20    morning, they, I guess, have another suggestion to  
21    throw out.

22                 JUDGE JONES: So just to clarify what you are

1     saying, your understanding is that the company will  
2     be filing its direct testimony perhaps sometime this  
3     week and we will check with company counsel with  
4     regard to that, and then your further suggestion was  
5     to set a schedule at some point after that to address  
6     scheduling?

7             MR. OLIVERO:  Correct, after all the parties  
8     have had a chance to look at the testimony.

9             JUDGE JONES:  So that sort of proposal is  
10    intended to give other parties an opportunity to look  
11    at the company's direct testimony, was that the idea?

12            MR. OLIVERO:  That's correct.  And I hadn't  
13    really heard back.  I guess I will go on record.  I  
14    hadn't really heard back from anybody not agreeing  
15    with that.  I think they had other thoughts, but.

16            JUDGE JONES:  We will give other parties an  
17    opportunity to comment on that if they wish to.  What  
18    we will do next, I think, is check with company  
19    counsel here on the status of the direct testimony  
20    filing which was part of the Staff scheduling  
21    proposal, and it sounds as though there may be some  
22    other suggestion coming from company counsel with

1     respect to either a status hearing date or some  
2     element of what the Commission Staff was proposing.

3                     So we will check with company counsel  
4     on part of that right now. Before I forget, let me  
5     say that since we have a lot of persons on the phone  
6     and some here in Springfield, if you would identify  
7     yourself before you speak on the record, that will  
8     assist others in knowing who is doing the speaking.  
9     It will also help our court reporter attribute your  
10    comments to you, not somebody else, for those of you  
11    who are speaking on the phone. So we would  
12    appreciate it if those who do speak on the record  
13    would identify yourself in advance of doing so.

14                    With respect to the filing of the  
15    company's direct testimony, Staff counsel indicated  
16    what he believes is the company's intent in that  
17    regard. At this time let me check with company  
18    counsel and see if that's the plan.

19                   MR. AMBROSE: Yes.

20                   JUDGE JONES: Could you identify yourself?

21                   MR. AMBROSE: Gerald Ambrose on behalf of the  
22    Petitioner, the applicant. Thank you, Your Honor.

1                   Let me first just advise you that we  
2     have no objection to the Petitions to Intervene that  
3     have been filed, so if that was an item on your  
4     agenda, hopefully that will facilitate things.

5                   Now, we had discussed with Staff  
6     counsel this morning a proposal which we want to  
7     share. It is our intention to file this Friday our  
8     first round of testimony in this proceeding. We will  
9     submit four pieces of testimony which will discuss  
10    the application and the issues of need and public  
11    convenience and necessity and the propriety of the  
12    filing of the application, fitness and willingness  
13    and ability of Enbridge to operate the pipeline, to  
14    construct and operate the pipeline, and also the  
15    issues of eminent domain authority. Those are -- the  
16    first items I mentioned are the statutory criteria,  
17    of course, for certification as a common carrier by  
18    pipeline under the statute.

19                  So we recognize we have a number of  
20    Intervenors. We recognize the Staff has some  
21    scheduling and personal matters that have to be taken  
22    care of. We think it would be important for us to

1 know today and for you to know today what the  
2 position of the intervenors are or will be in this  
3 proceeding. The applications of the intervenors, of  
4 course, don't disclose that, but I think they can  
5 establish whether they intend to deny the issues of  
6 need, public convenience and necessity, of fitness  
7 and ability to operate in a proper filing that will  
8 help us understand what is going on here as well as  
9 if there is opposition is to the eminent domain  
10 aspect of the application.

11 Now, we recognize that Mr. Maple of  
12 Staff has some matters going on, and we think that's  
13 wonderful. A new addition to the family is always  
14 fun for everybody and we sympathize with that.

15 JUDGE JONES: Let me interrupt you. I am sorry  
16 for doing that, but before we get too deep into the  
17 Company's position on what scheduling should look  
18 like or other people's obligation in this case, let  
19 me just ask you a question. First, you say that the  
20 company's direct case will be filed by Friday this  
21 week?

22 MR. AMBROSE: Yes, we will submit four pieces

1 of testimony. We may thereafter supplement that with  
2 one or maybe two more but I am not sure about that.  
3 So we will give you the four that are the core of the  
4 case on Friday.

5 JUDGE JONES: With respect to the rest of the  
6 company's direct case, if there is more to be filed,  
7 when would that be submitted?

8 MR. AMBROSE: Well, frankly, I am just not  
9 sure. I don't think that we are really going to do  
10 that, but it is a possibility. I just raise it. But  
11 the four pieces of testimony we will submit on Friday  
12 will constitute the case.

13 JUDGE JONES: Well, if the company wants to  
14 keep open the option of submitting additional direct  
15 testimony as part of its direct case, that will be  
16 done by when?

17 MR. AMBROSE: Probably no more than a couple  
18 weeks, if that long.

19 JUDGE JONES: Okay. Thank you.

20 MR. AMBROSE: Now , the concept that we  
21 discussed --

22 JUDGE JONES: I am sorry, let me -- I need to



1 keep this moving along a little bit. Again, I am  
2 sorry for interrupting you, but I think at this point  
3 it might be an opportunity to give the parties an  
4 opportunity off the record to discuss scheduling with  
5 you and Staff and others.

6 We have heard what the Staff has  
7 suggested with respect to what needs to happen next  
8 and we have heard when the company would be filing  
9 its direct case and possibly some additional direct  
10 testimony if it elects to do so, and we have also  
11 heard from the applicant. The applicant may have  
12 some different -- a different date to propose with  
13 respect to a status possibly. I am not sure. And if  
14 we need to get to that on the record, we will. We  
15 will make sure that you get an opportunity, along  
16 with everybody else, to indicate what you believe  
17 should happen next on behalf of your client and we  
18 will give others the same opportunity.

19 I think right now we kind of have an  
20 idea of when the testimony filing is headed this way  
21 as well as any additional direct filing that Enbridge  
22 may elect to make. We have the Staff's scheduling

1 suggestion and also an indication that Enbridge may  
2 have a different position on the timing of a status  
3 hearing and perhaps some other things. I recognize  
4 that there are a number of other parties, too, who  
5 would like to weigh in on what should happen next,  
6 too. We will certainly provide that opportunity to  
7 all of you. But right now I think that we have  
8 enough to work with and we should give the parties an  
9 opportunity off the record to discuss these  
10 scheduling things that we have been discussing at  
11 this point and seeing what you can come up with. And  
12 we will go from there.

13 So with that in mind, let the record  
14 show we hereby go off the record.

15 MR. AMBROSE: Well, excuse me.

16 JUDGE JONES: I am sorry, if I might, we hereby  
17 go off the record to permit Enbridge counsel, Staff  
18 counsel and others to discuss these matters among  
19 themselves to see what you believe needs to happen  
20 next. We will hear from you when we get back on the  
21 record and anybody that has a proposal to make or a  
22 different view on what someone else is proposing will

1 be given the opportunity to voice its position either  
2 today orally or in some other manner such as in  
3 writing.

4 So at this point we hereby go off the  
5 record for those purposes.

6 (Whereupon there was then had an  
7 off-the-record discussion.)

8 JUDGE JONES: Back on the record. Let the  
9 record show there was an off-the-record discussion  
10 among the parties for the purposes indicated. It was  
11 intended to relate primarily to scheduling.

12 As parties are aware, before we went  
13 off the record Staff counsel, ICC Staff counsel, Mr.  
14 Olivero, proposed some short term scheduling  
15 involving the filing of the company's direct  
16 testimony and then a status hearing date after that.  
17 There appeared to be some question about whether the  
18 status hearing date was something that other parties,  
19 including the applicant, were okay with or not.

20 In any event, just to go back to Mr.  
21 Olivero for a minute, your proposal that you made  
22 previously, is that still what you are proposing with

1     respect to what should happen next?

2             MR. OLIVERO:   Yes, Your Honor, on behalf of the  
3     Staff.   I mean, we were actually at the time just  
4     suggesting the status hearing to determine how long  
5     it would take for Staff in order to file its  
6     testimony and the remainder of the schedule.   The  
7     company, I believe, had other thoughts with respect  
8     to intervenors filing their direct testimony, and we  
9     really don't have a position on that.   But we were  
10    still suggesting the week of October 29 as being the  
11    date for a status hearing to then determine further  
12    scheduling.

13            JUDGE JONES:   So that further scheduling that  
14    would be addressed under your proposal would include  
15    Staff and Intervenor testimony and any other  
16    testimony dates in the process, is that -- I am just  
17    trying to clarify what you were suggesting.   The 29th  
18    day, if that were to occur, would be used to address  
19    all further scheduling elements?

20            MR. OLIVERO:   Correct, that's right.

21            JUDGE JONES:   And is that still what you are  
22    suggesting?

1           MR. OLIVERO:   Yes.

2           JUDGE JONES:   All right.   So let's just focus  
3   on that Staff proposal for the moment which would  
4   involve the filing by Friday by the applicant of its  
5   direct testimony, possibly some additional direct  
6   testimony, and then a status hearing date at which  
7   further scheduling would be addressed.

8                         Does the applicant or any other party  
9   have an objection to what Staff is proposing as just  
10  explained by Mr. Olivero?

11          MR. AMBROSE:   Well, Your Honor, Gerald Ambrose  
12  on behalf of the applicant.   Let me just explain for  
13  the record our position, our thought, about this  
14  issue we have been discussing.

15                         And that is, that since the  
16  application has been on file for quite awhile,  
17  considerable information is out there, this case is  
18  very similar to the previous case that the Commission  
19  just decided in April of this year involving a  
20  pipeline like this, that there is no reason for a  
21  long period of time for Intervenors.   We had some  
22  long discussions that I won't go into about various

1 positions, but it was our view that it would  
2 facilitate the process if the Intervenor would state  
3 their positions and get their testimony in. I  
4 originally suggested a couple weeks, suggested then  
5 three weeks to have that done. I never got any kind  
6 of firm commitment from anybody as to when they could  
7 do it.

8                   We are willing to go with the Staff to  
9 have another status and get dates settled. But at  
10 that point in time we certainly should be able to get  
11 definitive dates from everybody as to when we are  
12 going to do things and those dates should be short  
13 because they will have had the testimony, they will  
14 have had all the data responses, they will have had  
15 the application for quite awhile.

16                   So if we are going to do that, then I  
17 would suggest, subject to check with Mr. Maple's  
18 availability, that we have another status on the 30th  
19 which is Tuesday of that week or the 30th or 31st and  
20 do it in the early afternoon and get this schedule  
21 nailed down and keep that schedule on a short basis.

22                   JUDGE JONES: So you are suggesting the date

1 of--

2 MR. AMBROSE: Tuesday the 30th or Wednesday the  
3 31st.

4 JUDGE JONES: Instead of the 29th?

5 MR. AMBROSE: Well, yes. Frankly, it is just  
6 kind of personally I couldn't do, the 29th.

7 JUDGE JONES: So we will hear from other  
8 parties with respect to that. So what we essentially  
9 have now, if I understand it, correct me if I am  
10 wrong, is the Staff suggestion that a shorter  
11 schedule would involve the company filing their  
12 direct testimony. That would be followed then by a  
13 status hearing on October 29, 30, 31 possibly, at  
14 which further scheduling would be addressed.

15 Now, do any of the other parties have  
16 any objection to that type of proposal? Putting  
17 aside for a moment the exact date of such a status,  
18 do any of the other parties have any objection to  
19 that type of proposal?

20 MR. ROBINSON: This is Jon Robinson. While you  
21 were away, I think all of the intervenors'  
22 representatives that I heard come on the line agreed

1 with Jim Olivero's suggestion that we have this,  
2 whether it be the first -- the Monday, Tuesday or  
3 Wednesday is up to your schedule, that certainly  
4 works for us and I think that was agreeable. We  
5 couldn't come to an agreement because Enbridge  
6 wanted, I think, to have the intervenors file at some  
7 specific date, and we just don't think that we can do  
8 that.

9 So it is agreeable with me on behalf  
10 of my clients, and I suspect it is with the others as  
11 well.

12 MR. PLIURA: Tom Pliura, we are stipulating  
13 that that proposal is fine with them, to wait for the  
14 status hearing and then address further scheduling at  
15 that time as recommended by the Staff.

16 MR. HOLSTINE: This is Andy Holstine,  
17 intervenor, I am an attorney, and we agree with that  
18 as well.

19 MR. PLIURA: Your Honor, one of the things --

20 JUDGE JONES: Who is speaking?

21 MR. PLIURA: Oh, I am sorry, yeah, Tom Pliura.  
22 One of the things that I think we need to discuss



1     today and decide whether you want to discuss it at  
2     the status hearing is a date, a last date, by which  
3     parties can file a motion to intervene. And I don't  
4     know what the usual process for that is, but I would  
5     certainly note there are a significant number of  
6     people that have not yet intervened that wish to do  
7     so, and I have encouraged them to do so promptly.

8                     What are your thoughts or what are the  
9     parties' thoughts on that?

10            JUDGE JONES: Well, the Rules of Practice  
11     address intervention and I wouldn't have anything to  
12     add to that today. I think that anybody that  
13     intervenes after the date of the initial hearing  
14     would --

15            MR. PLIURA: Seek leave?

16            JUDGE JONES: Would be doing something that we  
17     see certainly from time to time, but there are some  
18     provisions in the Rules of Practice with respect to  
19     intervention after the initial hearing, and I think  
20     essentially one would take the case where it finds  
21     it, etcetera. So I would simply refer potential  
22     parties or those asking on their behalf to refer to

1 the Rules of Practice with respect to that. To the  
2 extent we need to get more specific about that if  
3 particular instances arise that would involve some  
4 disagreement over the rights of those potential  
5 parties, we will deal with that accordingly.

6 That's all I have to say at this point  
7 with respect to any additional potential intervenors.

8 MR. AMBROSE: Your Honor, Gerald Ambrose on  
9 behalf of the applicant again. Let me just make  
10 clear that what we are saying is we accept the Staff  
11 idea with the caveat that at that time we are going  
12 to have dates that these intervening parties can  
13 discuss and no more of, well, we need more time. I  
14 think we need something specific to look at and  
15 decide upon.

16 Now, there is another point that has  
17 arisen in the discussions here just as you walked  
18 back in the room, and that is Mr. Pliura indicated he  
19 intends or is thinking about filing a challenge to  
20 the Commission's jurisdiction on this matter. I  
21 think if he intends to do that, he should do so  
22 immediately and get this thing resolved, if he has

1     some basis to challenge the Commission's  
2     jurisdiction.

3             JUDGE JONES:   Thank you.   Mr. Pliura, any  
4     comment on that?

5             MR. PLIURA:   Well, I certainly anticipate  
6     filing a challenge to that.   It is going to be wholly  
7     dependent on what the direct testimony is that's  
8     going to be submitted, you know, by the applicant  
9     Enbridge.   I really don't anticipate very much of a  
10    problem.

11             I think the comment came from  
12    Mr. Ambrose who I guess commented an opinion that  
13    this was a relatively narrow case and that it seemed  
14    like the only issue was -- if the only issue was  
15    going to be eminent domain, then the parties didn't  
16    need a whole lot of time to address that.

17             I just mentioned that eminent domain  
18    certainly is not the only issue.   I traveled from  
19    Weldon to Mt. Vernon and learned a little bit more,  
20    and then we anticipate challenging the jurisdiction  
21    of the Commission on this issue.   I don't think it  
22    will take very long, quite frankly, for us to put

1       together a motion to dismiss at all, but we want to  
2       wait until after we see the direct testimony.

3               MR. AMBROSE:   May I respond to that, Your  
4       Honor?

5               JUDGE JONES:   Go ahead.

6               MR. AMBROSE:   There is absolutely no reason why  
7       he needs to see the direct testimony to challenge the  
8       jurisdiction of the Commission.   That could have been  
9       done any time.   It is not dependent upon the  
10      testimony, besides which he will have it on Friday.  
11      So if he needs it or he thinks he does, he can file  
12      his motion to dismiss on Monday.

13              JUDGE JONES:   Mr. Pliura, did you have a time  
14      frame, a date, in mind in terms of filing the motion  
15      to dismiss as you propose?

16              MR. PLIURA:   Well, I didn't.   Monday is a  
17      holiday, of course, but I would anticipate 7 to 10  
18      days after Monday, certainly within two weeks after  
19      Monday, we can get that, get something on file.   I  
20      would like time to digest whatever it is that they  
21      are going to file on Friday, and I am going to be  
22      leaving town for a three-day holiday with my family.

1     So I will just need a little time to look at it. I  
2     would certainly think that within 14 days of Monday  
3     which is a holiday I could have something on file.

4             JUDGE JONES: All right. So you are  
5     suggesting, if you are going to file it at all, you  
6     would have it on file by October 22?

7             MR. PLIURA: Yes.

8             MR. AMBROSE: Again, on behalf of the applicant  
9     I think that's way too much time to bring on the  
10    issue of jurisdiction. When there is a basis to say  
11    this Commission doesn't have jurisdiction, it ought  
12    to be grappled with immediately.

13            MR. PLIURA: Well, we are trying to get a hold  
14    of some experts as well. This is Tom Pliura again.  
15    I think it will require some review by experts,  
16    geology and petroleum experts, so that's in the  
17    process right now. But that just doesn't happen  
18    overnight.

19            MR. AMBROSE: Your Honor, I would just note for  
20    the record that questions of experts on geology and  
21    other matters has nothing to do with the jurisdiction  
22    of this Commission.

1           MR. PLIURA: I think you will see when we file  
2   it that it does.

3           MR. AMBROSE: I would suggest that anybody who  
4   wants to bring on such a motion do so no later than  
5   the 15th of this month.

6           JUDGE JONES: Do other parties have any  
7   position on that scheduling matter?

8           MR. ROBINSON: Jon Robinson, I don't. I think  
9   it is your call, Judge.

10          JUDGE JONES: Anybody else?

11          MR. OLIVERO: Staff has no comment, Your Honor.

12          JUDGE JONES: Assuming a motion were filed on  
13   the 22nd, Mr. Ambrose, what date would you propose  
14   for any responses to that motion?

15          MR. AMBROSE: Since I cannot conceive of the  
16   basis of a motion, Your Honor, I guess I am going to  
17   have to say it is going to be at least as long as he  
18   is going to ask for to respond to it. So I would say  
19   two weeks, all the more reason why we ought to do it  
20   sooner.

21          JUDGE JONES: In terms of the period, the  
22   window, for responding to any motions to dismiss,

1     does any party have any objection to those being due  
2     within two weeks for the time being, assuming an  
3     October 22 filing date of the motion itself?

4             MR. ROBINSON:   Jon Robinson again, I don't have  
5     any objection to that.

6             JUDGE JONES:   Commission Staff?

7             MR. OLIVERO:   We have no objection, either.

8             JUDGE JONES:   Anybody else?

9             MR. HOLSTINE:   No objection, this is Andy  
10    Holstine.   That would be November 5?

11            MR. AMBROSE:   We don't have the filing date  
12    established yet, do we?

13            JUDGE JONES:   No.   One thing still to pin down  
14    is the specific date for the status hearing.   Of  
15    course, the easiest thing for me to do would be just  
16    to set one after referring to the calendar, after  
17    giving the parties a chance to select the date there  
18    that would best accommodate the group.   So for that  
19    limited purpose we hereby go off the record.

20                               (Whereupon there was then had an  
21                               off-the-record discussion.)

22            JUDGE JONES:   Back on the record.   Let the

1 record show there was an off-the-record discussion  
2 for the purposes indicated.

3 With respect to the status hearing  
4 date to be used under what's been referred to as  
5 Staff's scheduling proposal, I believe the lesser of  
6 evils appears to be October 31 at 10:00 a.m. Let me  
7 make sure. Does anybody have any objection to that?

8 MR. AMBROSE: No objection on behalf of the  
9 applicant, Your Honor. Thank you.

10 JUDGE JONES: That's what we will do.

11 The question was also raised as to  
12 whether participation by telephone would be  
13 permitted. That question is sort of still under  
14 review, but parties will be advised well in advance  
15 of that date about that option.

16 As parties are aware, there was also a  
17 discussion among the parties and to some extent  
18 disagreement among the parties with respect to the  
19 filing dates or due dates for any motions to dismiss  
20 or other motions seeking similar relief. I believe  
21 that the two competing proposals are October 22 and  
22 October 15. That would be followed by a response



1 window of 14 days from whichever initial date would  
2 be selected. So I will get back to that in just a  
3 minute.

4 I do need to clarify one thing with  
5 respect to what's going to happen under the  
6 applicant's testimony filing schedule. So,  
7 Mr. Ambrose, the bulk of that will be filed October  
8 5, is that correct? The bulk of that will be filed  
9 October 5?

10 MR. AMBROSE: Your Honor, yes, we will file on  
11 Friday four pieces of testimony that will constitute  
12 our case in chief. And I will state now that that  
13 will be it. As long as we have a reply or rebuttal  
14 date for rebuttal testimony, that's all we need.

15 JUDGE JONES: So you are not seeking to reserve  
16 the opportunity for supplemental or additional  
17 direct, is that correct?

18 MR. AMBROSE: No, we will be content with a  
19 reply or rebuttal date.

20 JUDGE JONES: Okay, thank you. And copies of  
21 that will be served on other parties, correct?

22 MR. AMBROSE: Electronically on Friday, yes.

1 JUDGE JONES: Electronically you say?

2 MR. AMBROSE: Yes.

3 JUDGE JONES: All right, thank you. Now, with  
4 respect to the date for any motions to dismiss or  
5 motions seeking similar relief, we have proposals and  
6 the bases for the proposals on the table.

7 MR. PLIURA: Tom Pliura proposes October 22.

8 JUDGE JONES: Correct, right. All right. The  
9 due date for any motions to dismiss or other motions  
10 seeking similar relief will be Friday, October 19.  
11 Copies of that will be filed electronically on other  
12 parties and on me not later than 5:00 p.m. on that  
13 date.

14 At this time a date will also be  
15 provided for any responses to that motion to dismiss,  
16 be they filed by the Applicant or be those responses  
17 filed by other parties, that is other than the  
18 movant. I think the parties had suggested a two-week  
19 window for that purpose. Accordingly, any such  
20 responses would be due on Friday, November 2.

21 Anything else that needs to be  
22 scheduled with respect to those motions can be taken

1 up at the prehearing -- or, I am sorry, the status  
2 hearing on the 31st. But I think we do need to get  
3 the response date in the record today so parties are  
4 aware of what that is so they can plan accordingly.  
5 If we need to add any other dates to that for  
6 replies, etc., that will be dealt with along with  
7 other scheduling matters on October 31.

8                   So that's what we will do with that.  
9 Any questions about how that works? All right. Let  
10 the record show there is not. And again that date  
11 for the filing of those motions will apply to any  
12 party that wishes to file a motion seeking such  
13 relief. As noted, the response date applies not only  
14 to the applicant but also to any other party who  
15 wishes to respond.

16                   Hang on one moment while I briefly  
17 look over the notes here.

18                   (Pause.)

19                   I think that's it then for today's  
20 purposes. Let me briefly check with the parties to  
21 make sure. Is there anything else before we conclude  
22 today's prehearing conference?

1           MR. OLIVERO: Judge, you had raised an issue  
2 about the Petitions to Intervene, and I was just  
3 going to add that as long as company has no  
4 objections, Staff has no objections.

5           JUDGE JONES: That's a good point. I ran a  
6 little longer than parties may have blocked out.  
7 Does anybody have my problem taking up those  
8 intervening petitions at this time?

9           MR. AMBROSE: No, Your Honor.

10          JUDGE JONES: All right. Let the record show  
11 there was no objection. We will go ahead and take  
12 those up right now.

13                   Let me just ask up front does any  
14 party have any objection to any of the Petitions for  
15 Leave to Intervene that had been filed to date?

16          MR. AMBROSE: Applicant has no objection to any  
17 of those that have been filed to date, Your Honor.

18          JUDGE JONES: All right. Thank you. Anybody  
19 else?

20          MR. ROBINSON: No.

21          JUDGE JONES: Who was that?

22          MR. AMBROSE: That was Jon Robinson.

1           JUDGE JONES: Thank you. Let the record show  
2   that all Petitions for Leave to Intervene that have  
3   been filed to date are hereby granted. I am not  
4   going to read those into the record at this time.  
5   The Petitions for Leave to Intervene that have been  
6   filed are all shown on the docket sheet section of  
7   the e-Docket docketing system. So all those being  
8   granted at this time are the ones that are shown as  
9   having been filed today as they appear on the  
10   e-Docket system. There will be further documentation  
11   of that on e-Docket with respect to specifically  
12   which ones are being granted, but I will not require  
13   anyone to sit here and listen to me read through  
14   those at this time, unless some party sees a need for  
15   that.

16                   Does anybody have an objection to that  
17   sort of abbreviated procedure?

18           MR. AMBROSE: No objection by the applicant,  
19   Your Honor.

20           JUDGE JONES: All right. Let the record show  
21   that that is what we will do. So that is the ruling.  
22   All Petitions for Leave to Intervene filed by today

1 are granted.

2 Anything else? All right. Let the  
3 record show --

4 MR. HEALEY: Your Honor, this is Tom Healey  
5 with Illinois Central. To be clear, there has not  
6 been a deadline yet for filing Petitions to  
7 Intervene, correct?

8 JUDGE JONES: The Rules of Practice speak for  
9 themselves on that. I don't have anything else to  
10 say about it. They provide guidance in there with  
11 respect to dates for filing intervening petitions and  
12 what happens to those that are submitted after the  
13 initial hearing date. So I will leave it at that for  
14 now. To the extent that filings are made that result  
15 in disagreements over intervention or intervenor's  
16 rights, we will deal with those as necessary.

17 Anyone else? All right. Let the  
18 record show no other matters will be taken up today.  
19 At this time let the record show this prehearing  
20 conference hearing is over. Thanks to all the  
21 parties for your participation and your work in  
22 coming up with some shortened scheduling.

1                   At this time let the record show this  
2   matter is hereby continued to a status hearing date  
3   which will be used to address further scheduling and  
4   other prehearing conference matters as needed which  
5   will be held on October 31 at 10:00 a.m. Thank you.  
6   Have a good rest of the day.

7                   (Whereupon the hearing in this  
8                   matter was continued until  
9                   October 31, 2007, at 10:00 a.m.  
10                  in Springfield, Illinois.)

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